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9 Attorneys for Respondent

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12

13 VICTOR ROGER HERNANDEZ,

14 Petitioner,

15 v.

16 JAMES YATES, Warden,

17 Respondent.  
18

C 08-1154 JF (PR)

**APPLICATION FOR  
ENLARGEMENT OF TIME TO  
FILE REPLY TO OPPOSITION**

19  
20 For the reasons stated in the accompanying declaration of counsel, respondent hereby  
21 requests a thirty-day enlargement of time in which to file his reply to petitioner's opposition to  
22 respondent's motion to dismiss the petition as untimely. As explained in the accompanying  
23 declaration, counsel is currently, but has not yet finished, gathering evidence in response to  
24 petitioner's opposition.

25 Counsel has not contacted petitioner regarding this request, as he is in custody and not  
26 represented by counsel.

27 WHEREFORE, respondent respectfully requests that this Court grant an enlargement of  
28 time, to and including September 22, 2008, in which to file his answer.

1 Dated: August 26, 2008

2 Respectfully submitted,

3 EDMUND G. BROWN JR.  
4 Attorney General  
5 DANE R. GILLETTE  
6 Chief Assistant Attorney General  
7 GERALD A. ENGLER  
8 Senior Assistant Attorney General  
9 PEGGY S. RUFFRA  
10 Supervising Deputy Attorney General

11 /s/ Gregory A. Ott  
12 GREGORY A. OTT  
13 Deputy Attorney General

14 Attorneys for Respondent

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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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13 VICTOR ROGER HERNANDEZ,  
14

Petitioner,

15 v.  
16

17 JAMES YATES, Warden,  
18

Respondent.

C 08-1154 JF (PR)

**DECLARATION OF COUNSEL IN  
SUPPORT OF APPLICATION FOR  
ENLARGEMENT OF TIME TO  
FILE REPLY TO OPPOSITION**

19  
20 I, GREGORY A. OTT, declare under penalty of perjury as follows:

21 I am the California Deputy Attorney General assigned to represent respondent in this case.  
22 Respondent's reply to petitioner's opposition to the motion to dismiss was due on August 25, 2008,  
23 by my count: My reply was due fifteen days after "service" of the opposition, but petitioner's  
24 opposition contains no dated proof of service. It was received by this office on August 8, 2008,  
25 fifteen days after which is August 25.

26 I have not previously requested an enlargement of time in this case.

27 On June 23, 2008, I filed a motion to dismiss the petition for writ of habeas corpus as  
28 untimely under 28 U.S.C. § 2224(d)(1). Petitioner has filed an opposition, in which he makes

1 various assertions of fact in attempt to excuse the timing of his petition.

2 I request an additional thirty days to file my reply for the following reasons. In his  
3 opposition, petitioner makes various assertions of fact in attempt to excuse the timing of his petition,  
4 chiefly regarding his custody credits and when he learned that he was not receiving any. I am  
5 currently attempting to gather evidence, to the extent it exists, from the prison in response to those  
6 assertions. Additional time beyond the allotted fifteen days is needed, however, to gather any  
7 existing evidence and present it in a reply.

8 I have not contacted petitioner regarding this request, as he is in custody and not  
9 represented by counsel.

10 Accordingly, I request that the Court grant respondent to and including September 22,  
11 2008, in which to file its reply to the opposition to the motion to dismiss.

12 I declare under penalty of perjury of the laws of the State of California and the United  
13 States of America that the foregoing is true and correct. Executed at San Francisco, California on  
14 August 26, 2008.

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17 /s/ Gregory A. Ott  
18 GREGORY A. OTT  
19 Deputy Attorney General  
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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11  
12 VICTOR ROGER HERNANDEZ,

13 Petitioner,

14 v.

15 JAMES YATES, Warden,

16 Respondent.  
17

C 08-1154 JF (PR)

**ORDER**

18 GOOD CAUSE APPEARING, it is hereby ordered that Respondent may have until  
19 September 22, 2008, to file his reply to petitioner's opposition to the motion to dismiss the petition  
20 as untimely.

21 DATED: \_\_\_\_\_, 2008.  
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23  
24 JEREMY FOGEL  
United States District Judge  
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28

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Hernandez v. Yates, Warden**

No.: **C 08-1154 JF (PR)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On August 27, 2008, I served the attached **APPLICATION FOR ENLARGEMENT OF TIME TO FILE REPLY TO OPPOSITION; DECLARATION OF COUNSEL IN SUPPORT OF APPLICATION FOR ENLARGEMENT OF TIME TO FILE REPLY TO OPPOSITION; ORDER** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

Victor Hernandez  
No. K-31659  
Pleasant Valley State Prison  
P.O. Box 8504  
Fac D-3-128-L  
Coalinga, CA 93210

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 27, 2008, at San Francisco, California.

\_\_\_\_\_  
D. Desuyo  
Declarant

\_\_\_\_\_  
/s/ D. Desuyo  
Signature